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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: LIN-01-204-53536

Office: Nebraska Service Center

Date: MAY 31 2002

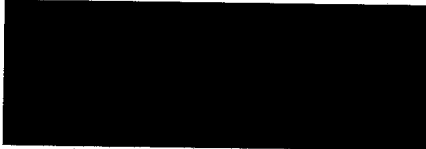
IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

redacting data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

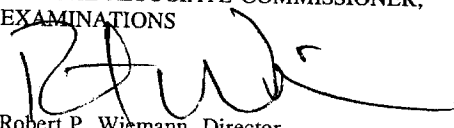
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition approved.

The petitioner is an university bookstore with 183 employees and a gross annual income of just over \$19.1 million. It seeks to employ the beneficiary as a graphic designer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because he did not find the duties of the offered job as described by the petitioner to be indicative of a position that would normally require a baccalaureate or higher degree in a specialized area of study. On appeal, counsel states that the duties of the proffered position of graphic designer are so specialized and complex that a baccalaureate degree is required. Counsel cited the holding reached in Young China Daily v. Chappell, 742 F. Supp. 522 (N.D. Cal. 1989), to support his argument that the position of graphic designer is a specialty occupation.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

3. The employer normally requires a degree or its equivalent for the position; or

4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The duties of the beneficiary in the proffered position are described in pertinent part as follows:

...will provide design and production for print ads and other projects including, but not limited to: brochures, sales and marketing materials, promotional materials, web art work and banners. She will prepare art for final production by setting up electronic document, formatting text, scanning and manipulating photos to be used as final art. Further, she will solicit bids, make press checks and work with a variety of vendors, including printers and service bureaus, print projects including newspaper advertising, community communications, identity design and in-store promotional materials. Also, she will prepare graphic files for print on Mac platform, and coordinate with outside agencies, art services and printers. In addition, she will participate in art direction as needed. [The beneficiary] will maintain effective working relationships with clients (internal/external). Moreover, she will interact with client to produce pieces that meet objectives within time and budget constraints, and coordinate projects under supervision of manager - communicate with clients and vendors, estimate time, develop and maintain schedule, work within budget. [The beneficiary] may travel to our other customer sites in Eugene and Portland for voice of the customer interaction. In addition to the above duties, [the beneficiary] will be expected to maintain knowledge of current developments in the field of Graphic Design, and attend seminars and in-service training programs.

The proffered position is that of graphic designer. The Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, notes that a bachelor's degree is required for most entry-level design positions including that of a graphic designer, with the exception of the positions of a floral designer and a visual merchandiser.

The Service interprets this language to mean that a degree in a specialized and related area is a requirement except in unique instances. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

Therefore, it is concluded that the grounds cited by the director for denial have been overcome.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary holds a bachelor of fine arts degree conferred by the University of Oregon. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the director's decision will be withdrawn and the petition will be approved.

**ORDER:** The director's decision is withdrawn and the petition is approved.